

REMARKS

The non-final Office Action of September 23, 2008, has been considered by the Applicants. Claims 43-48 and 50 are pending.

Claims 43-48 and 50 were rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Schneider (U.S. Patent No. 6,749,804). Applicants traverse the rejection.

This rejection requires the reference date to be the filing date of the provisional application (October 30, 2000). Otherwise, Schneider is not applicable at all under 102(e). The provisional application must properly support the subject matter relied upon to make the rejection. Applicants submit that 60/243,798 does not properly support the subject matter relied upon. In particular, the Examiner relies upon Schneider's discussion of Darkling beetles and pH of less than 5. However, these two aspects are not present in 60/243,798 itself. Applicants note that the provisional discusses treating animal waste with a combination of citric acid and trichloromelamine. However, no discussion of pH is made at all. Thus, Schneider cannot have a reference date of October 30, 2000 with respect to this application, and 102(e) does not apply.

Applicants request withdrawal of the rejection.

Claims 43-48 and 50 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Arsem (U.S. Patent No. 2,472,361), Marks (U.S. Patent No. 2,817,621), and Katzen (U.S. Patent No. 4,369,199). Applicants traverse the rejection.

The Examiner reasoned that: Arsem disclosed trichloromelamine (TCM); Marks disclosed a germicide / disinfectant comprising TCM having a preferred pH below 5; and Katzen disclosed applying an acid having a pH of about 4 to an animal pen or bedding to eliminate gases and pathogens. According to the Examiner, it would have been obvious to use the TCM composition of Marks in an animal pen / bedding as taught by Katzen to obtain the germicidal / disinfecting advantages disclosed by Marks and eliminate gases / pathogens as disclosed by Katzen.

The Examiner appears to have applied improper hindsight reasoning. In particular, none of the cited references discuss the control of Darkling beetles.

Applicants believe this point is important because these are method claims, and so the preamble should be considered a limitation of the claim.

CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 43-48 and 50) are now in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.

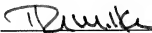
In the event the Examiner considers personal contact advantageous to the disposition of this case, he is hereby authorized to call Richard M. Klein, at telephone number 216-363-9000, Cleveland, OH.

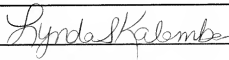
Respectfully submitted,

FAY SHARPE LLP

July 6, 2009

Date


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